



SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270-815, OMB Control No. 3235-0769]

Proposed Collection; Comment Request; Extension: Rule 139b

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Securities and Exchange Commission

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Notice is hereby given that the Securities and Exchange Commission (the “Commission”) has, in accordance with the Paperwork Reduction Act of 1995 (P.L. 104-13, 44 U.S.C. 3501 et seq.) (“PRA”), is soliciting comments on the collection of information associated with the Rule 139b (17 CFR 230.139b) under the Securities Act of 1933 (15 U.S.C. 77a et seq.) (“Securities Act”) that was adopted by the Commission on November 30, 2018.¹ The Commission plans to submit this existing collection of information to the Office of Management and Budget (“OMB”) for extension and approval.

As directed by the Fair Access to Investment Research Act of 2017 (Pub. L. 115-66, 131 Stat. 1196 (2017) (the “FAIR Act”), the Commission adopted rule 139b under the Securities Act to extend the safe harbor under rule 139 to a “covered investment fund research report.” Specifically, rule 139b provides a safe harbor to a broker-dealer who publishes or distributes in the regular course of its business research reports concerning one or more “covered investment fund(s)” while participating in the distribution of a covered investment fund’s securities.

In the Adopting Release, the Commission adopted the provision that rule 139b include a standardized performance disclosure requirement. The Commission believes that standardized

¹ See Release No. 33-10580 (Nov. 30, 2018) [83 FR 64180 (Dec. 13, 2018)] (“Adopting Release”). Rule 139b became effective on January 14, 2019.

performance presentation is an appropriate requirement because investors tend to consider fund performance a significant factor in evaluating or comparing investment companies, and the requirement addresses potential investor confusion if a communication were not easily recognizable as research as opposed to an advertising prospectus or supplemental sales literature. Rule 139b requires that research reports about open-end funds that include performance information must present it in accordance with paragraphs (d), (e), and (g) of rule 482. Rule 139b also requires that research reports about closed-end funds that include performance information must present it in accordance with instructions to item 4.1(g) of Form N-2. Performance measures calculated by broker-dealers are not required to be kept confidential and there is no mandatory retention period. The Commission anticipates that compliance with these performance measures for each fund discussed in a research report, and for which the performance measures apply, would increase compliance costs for broker-dealers seeking to publish or distribute a covered investment fund research report.

It is difficult to provide estimates of the burdens and costs for those broker-dealers that will include performance information in a rule 139b research report. As discussed in the Adopting Release, this is difficult to estimate because current data collected does not reflect the affiliate exclusion, does not include the entire universe of covered investment funds, and it is uncertain what percentage of communications currently filed as rule 482 advertising prospectuses (or rule 34b-1 supplemental sales materials) will instead be published in reliance of rule 139b, as covered investment fund research reports.² For purposes of the PRA, we estimate that 10% of the rule 482 and rule 34b-1 communications currently filed by broker-dealers with FINRA (approximately 48,341) could be considered as rule 139b covered investment fund research reports. We estimate that broker-dealers will publish annually 4,834 (10% of 48,341) covered investment fund research reports. Moreover, we assume for purposes of the PRA that

² See Adopting Release, *supra* note 1, n. 413 and accompanying paragraph.

all estimated rule 139b research reports will include fund performance information. We further estimate that 1,169 broker-dealers would likely be respondents to the collection of information with a frequency of 4.1 responses per year.³ Additionally, we estimate that each research report will require 3 hours of ongoing internal burden hours by a broker-dealers' personnel to comply with the rule 139b collection of information requirements, which for each broker-dealer is estimated to be 12.3 internal burden hours.⁴ Accordingly, we estimate that the standardized performance presentation requirements will result in an average 12.3 annual hour burden per broker-dealer.

In sum, we estimate that rule 139b's requirements will impose a total annual internal hour burden of 14,379 hours on broker-dealers.⁵ We do not think there is an external cost burden associated with this collection of information.

This information collection is subject to the PRA and responses to this collection of information requirement would not be mandatory for broker-dealers seeking to rely upon rule 139b, but would be necessary for those broker-dealers that would like to provide performance information in their covered investment fund research reports. Responses to the information collections will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimate of the

³ From information provided by FINRA, for the period January 1, 2021 through December 31, 2021, there were an aggregate of 48,341 filings that were coded either as Rule 482 or Rule 34b1 filings. Furthermore, for the period January 1, 2021 through December 31, 2021, the Commission estimates that there were 4,834 covered investment fund research reports / 1,169 broker-dealers = 4.1 annual responses per broker-dealer.

⁴ 4.1 annual responses per broker-dealer x 3 internal burden hours = 12.3 annual internal burden hours per broker-dealer.

⁵ 12.3 annual internal burden hours * 1,169 broker-dealers.

burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: David Bottom, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street, NE Washington, DC 20549 or send an e-mail to: PRA_Mailbox@sec.gov .

Dated: July 6, 2022.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022-14745 Filed: 7/11/2022 8:45 am; Publication Date: 7/12/2022]